

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANDREA VARGAS,

Plaintiff,

V.

EVERGREEN PROFESSIONAL
RECOVERIES, INC. and KAISER
FOUNDATION HEALTH PLAN OF
WASHINGTON.

Defendants.

Case No. C21-926RSL-GJL

ORDER ON STIPULATED MOTION

This matter comes before the Court on the parties' joint stipulated motion (Dkt. # 68). In the motion, the parties ask the Court to (1) extend its recent summary judgment ruling, *see* Dkt. # 66, to dismiss plaintiff's outrage and civil conspiracy claims against defendant Kaiser on statute of limitations grounds; and (2) schedule an evidentiary hearing on plaintiff's claim for damages against defendant Evergreen Professional Recoveries, Inc.

A. Dismissal of Plaintiff's Remaining Claims Against Kaiser

22 In plaintiff's motion for summary judgment, she argued that she was entitled to summary
23 judgment on her Washington Consumer Protection Act ("CPA") claims against defendant
24 Kaiser. Dkt. # 49 at 12-25. Kaiser similarly addressed only plaintiff's CPA claims in its cross-
25 motion for summary judgment. Dkt. # 52. Accordingly, Magistrate Judge Creatura's Report &
26 Recommendation analyzed only those claims, finding that they were barred by the applicable
27 four-year statute of limitations. Dkt. # 61 at 18-23; *see also id.* at 3 n.2 (noting that "Kaiser
28 should remain a party to the action since it has not yet moved for summary judgment on

1 plaintiff's claims of outrage and conspiracy.”). This Court adopted that recommendation and
 2 dismissed plaintiff's CPA claims against Kaiser. Dkt. # 66 at 3-7. The parties now ask that
 3 plaintiff's remaining claims against Kaiser – specifically her outrage and civil conspiracy claims
 4 – also be dismissed, as, under the reasoning of the Court's Orders, these “claims would be
 5 likewise barred by their . . . statutes of limitation.” Dkt. # 68 at 2; *see also Doe v. State, Dep't of*
 6 *Soc. & Health Servs.*, 138 Wn. App. 1049, 1056 n.8 (2007) (noting that “[t]here is some
 7 disagreement in this state about whether outrage claims are governed by a three-year statute of
 8 limitations, RCW 4.16.080(2), or the two-year statute of limitations, RCW 4.16.100.”);
 9 *Scheidler v. Ellerby*, 169 Wn. App. 1020, 1024 (2012) (noting that a claim for civil conspiracy
 10 has a three-year statute of limitations and citing to RCW § 4.16.080(2)). Accordingly, the
 11 remaining unadjudicated claims of plaintiff against defendant Kaiser Foundation Health Plan of
 12 Washington are DISMISSED with prejudice and without costs. This Order is a final order of all
 13 claims against Defendant Kaiser Foundation Health Plan of Washington.

14 **B. Plaintiff's Claim for Damages Against Evergreen**

15 The Court now turns to the parties' request that the Court schedule an evidentiary hearing
 16 on the issue of damages as to plaintiff's Fair Debt Collection Practices Act (“FDCPA”) claims
 17 against defendant Evergreen. Dkt. # 68 at 2. However, the Ninth Circuit and this Court have
 18 previously endorsed the view that a defendant is entitled to a trial on the issue of damages under
 19 the FDCPA. *See Gonzales v. Arrow Fin. Servs.*, 660 F.3d 1055 (9th Cir. 2011); *Johnson v.*
 20 *Columbia Debt Recovery, LLC*, No. C20-573RSM, 2021 WL 2472630 (W.D. Wash. June 17,
 21 2021); *Howard v. Patenaude & Felix APC*, No. C21-686-LK, 2022 WL 4598089 (W.D. Wash.
 22 Sept. 30, 2022); *see also Adams v. Schumacher*, No. C13-2301-AC, 2015 WL 1538788 (D. Or.
 23 Apr. 7, 2015) (collecting cases). Accordingly, this Court will issue a scheduling order setting a
 24 trial on the issue of damages.

25 Although defendants indicated a request for a jury trial in the Joint Status Report, Dkt.
 26 # 11 at 5, the Court notes that no jury demand was filed in this case. *See Fed. R. Civ. P. 38.* “A
 27 party waives a jury trial unless its demand is properly served and filed.” *Id.* 38(d); *see also id.*
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1 39(b) ("Issues on which a jury trial is not properly demanded are to be tried by the court.").
2 Thus, the issue of damages will be resolved by the Court. *Id.* 52.

3 IT IS SO ORDERED.
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5 DATED this 11th day of May, 2023.
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10 Robert S. Lasnik
United States District Judge
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